

AMENDMENT: **AMENDMENTS TO THE GALLATIN COUNTY
SUBDIVISION REGULATION PURSUANT TO 2009
LEGISLATIVE CHANGES**

RESOLUTION NO. **2010-052**

ACTIVE DATE: **MAY 11, 2010**

House Bill 486 was enacted by the 2009 Legislature on May 5, 2009. The new legislation includes modifications to the Montana Subdivision and Platting Act (Title 76, chapter 3, MCA), which require numerous amendments to the Gallatin County Subdivision Regulations. Deletions to the text are shown as ~~strikeout~~, while additions to the text are shown as underline.

**SECTION 3: REVIEW AND APPROVAL PROCEDURES FOR
MAJOR SUBDIVISIONS**

B. **Authorized Agent.** The Planning Department is the authorized agent designated by the County Commission to review Subdivision applications. (HB 486, § 13)

L. **County Commission Decision and Documentation.**

c. Consideration-Evidence:

iv. Gallatin County Growth Policy. In accordance with Chapter 5.2, Evaluation of Subdivisions, of the Gallatin County Growth Policy, all proposed Subdivisions are evaluated for their effect on Agriculture, Agricultural Water User Facilities, Local Services, Natural Environment, Wildlife, ~~and Wildlife Habitat~~, and Public Health and Safety, along with all other elements of the Growth Policy. (HB 486, § 17)

e. Documentation of County Commission ~~Body~~ Decision:

i. In rendering its decision to approve, conditionally approve, or deny the proposed Subdivision application, the County Commission shall issue written findings ~~that discuss and weigh the proposed subdivision's compliance with these Regulations and pursuant to 76-3-608(3), MCA)~~ and make it available to the public provide those findings to the Subdivider within 30 working days following the decision. (HB 486, § 13)

- ii. The findings shall set forth the time limit for approval, discuss and weigh the proposed Subdivision's impact on the primary criteria pursuant to § 76-3-608(3), MCA, and these Regulations, and pursuant to § 76-3-620, MCA:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the County Commission relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the Preliminary Plat approval and that must be satisfied before the Final Plat may be approved.
 - E. ~~set forth the time limit for approval.~~ be made available to the public.

SECTION 4: REVIEW AND APPROVAL PROCEDURES FOR MINOR SUBDIVISIONS

B. Authorized Agent. The Planning Department is the authorized agent designated by the County Commission to review Subdivision applications. (HB 486, § 13)

E. Review Process.

- e. Review Period and Scheduling ~~Public Hearing~~. Following determination that the Subdivision application is sufficient for review, the Planning Department will review the application and schedule a ~~public hearing~~ decision before the County Commission within the statutory 35 working day review period. Within 35 working days, the County Commission shall approve, conditionally approve or deny the proposed Subdivision according to these Regulations, unless the Subdivider and the Planning Department agree in writing to an extension or suspension of the review period, not to exceed one year. (HB 486, § 17)

- f. ~~Public Hearing~~ Notice: The Planning Department shall send courtesy notice with the time and date of the scheduled decision on the Subdivision application ~~preliminary plat public hearing~~ to the list of adjoining property owners of record and each recorded purchaser under contract for deed, provided by the Subdivider. (HB 486, § 17)

F. First Minor Subdivision Exceptions.

The following do not apply to First Minor Subdivisions:

- a. preparation of an environmental assessment;
- b. parkland dedication;
- c. public hearing requirements; and
- d. ~~review of the subdivision application for the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety, if the subdivision is proposed in a jurisdictional area that has adopted zoning regulations that address those impacts.~~ (HB 486, § 17)

G. Planning Board Consideration and Recommendation of First Minor Subdivision.

- a. The County Commission shall seek the advice of the Planning Board in all matters pertaining to the approval or disapproval of Plats or Subdivisions. The Planning Board may delegate the Planning Department its responsibility to advise the County Commission on any or all proposed minor subdivisions pursuant to 76-1-107, MCA.
 - ii. Written Recommendation:
 - A. If applicable, prior to the County Commission public hearing decision, the Planning Board may submit a recommendation of approval, conditional approval (including any recommended conditions or mitigation measures), or denial of the Subdivision application based on the evidence presented and discuss the Subdivision's compliance with these

Regulations and impact on the primary criteria (76-3-608(3)(a), MCA. (*HB 486, § 17*))

H. Subdivider's Preference for Mitigation. If a Planning Board recommendation was provided, the Subdivider may, no later than two working days before the ~~hearing~~ scheduled date at which the County Commission is to consider the Subdivision application ~~and preliminary plat~~, submit in writing to the Planning Department the Subdivider's comments on and responses to the Planning Board's recommendations. At the ~~public hearing~~ scheduled date at which the County Commission is to consider the Subdivision application, the County Commission will consult with the Subdivider and will give due weight and consideration to the Subdivider's expressed preference. The County Commission may require the Subdivider to design the Subdivision to reasonably minimize potentially significant adverse impacts identified through the review required by these Regulations. The County Commission shall issue written findings to justify the reasonable mitigation required by these Regulations. (*HB 486, § 17*)

J. County Commission Hearing- General.

- a. After the Planning Board makes its recommendation (if applicable), the County Commission shall ~~hold a public hearing~~ make their decision on the Subdivision application. (*HB 486, § 17*)

K. County Commission Decision and Documentation of a First Minor Subdivision.

- b. Consideration-Standards:
 - iv. the MSPA, all Subdivisions are evaluated for their effect on Agriculture, Agricultural Water User Facilities, Local Services, Natural Environment, Wildlife, ~~and~~ Wildlife Habitat, and Public Health and Safety, along with all other elements of the Growth Policy. (*HB 486, § 17*)
- c. Considerations-Evidence: In making its decision to approve, conditionally approve, or deny a proposed Subdivision, the County Commission shall consider and weigh the following, as applicable:
 - v. comments, evidence and discussions ~~at the public hearing~~ presented before the County Commission;

Notwithstanding the foregoing, the County Commission may not consider any information regarding the Subdivision application

that is presented after the final ~~public hearing~~ decision (which may include a subsequent ~~hearing~~ decision date if any) when making its decision to approve, conditionally approve, or deny the proposed Subdivision. (*HB 486, § 17*)

L. Documentation of County Commission Decision.

- i. In rendering its decision to approve, conditionally approve, or deny the proposed Subdivision, the County Commission shall issue written findings ~~that discuss and weigh the proposed subdivision's compliance with these Regulations and pursuant to 76-3-608(3), MCA) and make it available to the public~~ provide those findings to the Subdivider within 30 working days following the decision. (*HB 486, § 13 and § 20*)
- ii. The findings shall set forth the time limit for approval, discuss and weigh the proposed Subdivision's impact on the primary criteria pursuant to § 76-3-608(3), MCA, and these Regulations, and pursuant to § 76-3-620, MCA:
 - A. contain information regarding the appeal process for the denial or imposition of conditions;
 - B. identify the regulations and statutes that are used in reaching the decision to approve, deny, or impose conditions and explain how they apply to the decision;
 - C. provide the facts and conclusions that the County Commission relied upon in making its decision and reference documents, testimony, or other materials that form the basis of the decision; and
 - D. provide the conditions that apply to the ~~preliminary plat~~ Subdivision application approval and that must be satisfied before the final plat may be approved.
 - E. ~~set forth the time limit for approval.~~ be made available to the public.

W. Amending Filed Plats.

- c. The County Commission may not approve an amendment that will place a Lot in non-conformance with the standards of these Regulations or with local zoning regulations unless the County

Commission ~~holds a public hearing on~~ considers the amendment and issues a written variance from the standards. (*HB 486, § 17*)

SECTION 9: ENVIRONMENTAL ASSESSMENT

A. General. It shall be the responsibility of the Subdivider to submit the information required by this Section with the ~~preliminary plat~~ Subdivision application.

2. For a First Minor Subdivision, a second or Subsequent Minor Subdivision, the Subdivider need only to provide a summary of the probable impacts of the proposed subdivision based on the primary review criteria established in 76-3-608(3)(a), MCA, (effects on Agriculture, Agricultural Water User Facilities, Local Services, the Natural Environment, Wildlife, ~~and~~ Wildlife Habitat, and Public Health and Safety). (*HB 486, § 17*)

~~B. Exemptions From Environmental Assessment.~~

- ~~1. The requirement for preparing an environmental assessment pursuant to 76-3-504(1), MCA, shall be waived when:~~
 - ~~a. The proposed subdivision is totally within an area covered by a growth policy adopted pursuant to Section 76-1-606, MCA; and~~

~~County zoning pursuant to a growth policy has been adopted pursuant to sections 76-2-201 through 76-2-228, MCA; and~~

~~a long-range development program of the public works projects has been adopted pursuant to Section 76-1-601(2)(e), MCA.~~
 - ~~b. The proposed subdivision is the first minor subdivision from a tract of record.~~
- ~~2. A planning board (or Commission, outside of a planning board jurisdiction) may grant a variance to exempt the subdivider from the completion of all or any portion of the environmental assessment when:~~
 - ~~a. The proposed subdivision is in an area covered by a growth policy adopted pursuant to sections 76-1-601 through 76-1-~~

~~606, MCA and the proposed subdivision is in compliance with the growth policy; or~~

- ~~b. The subdivision will contain fewer than 10 parcels and less than 20 acres.
The subdivider may request the variance for an exemption as a part of the pre-application process.~~

~~When such variance for an exemption is granted, the planning board or Commission shall prepare and certify a written statement of the reasons for granting the variance for an exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. (HB 486, § 23)~~

- E. Summary of the Probable Impacts Criteria.** All Subdivisions must be designed so that they do not adversely impact Agriculture, Agricultural Water User Facilities, Local Services, the Natural Environment, Wildlife, ~~and Wildlife Habitat~~, Public Health and Safety, pursuant to the MSPA, or that such adverse impacts have been avoided or mitigated to the maximum extent possible. (HB 486, § 17)

- 5. The effect on Wildlife ~~and wildlife habitat~~ and proposed mitigation of impacts. Wildlife are defined as those animals that are not domesticated or tame. ~~Wildlife habitats are defined as the place or area where wildlife naturally lives or travels through.~~
 - ~~a. Proximity to area of significant wildlife habitat or critical wildlife areas.~~
 - b. Expected effects of pets and human activity on Wildlife.
 - c. Effects on fisheries.
 - d. Effects on public access to public lands, Trails, hunting or fishing areas.
 - ~~e. Describe what impacts the subdivision or associated improvements would have on wildlife areas such as big game wintering range, migration routes, nesting areas, wetlands, or important habitat for rare or endangered species.~~
 - f. Additional information as needed.

6. The effect on Wildlife Habitat and proposed mitigation of impacts. Wildlife Habitats are defined as the place or area where Wildlife naturally lives or travels through.
 - a. Proximity to area of significant Wildlife Habitat or critical Wildlife areas.
 - b. Effects on public access to public lands, Trails, hunting or fishing areas.
 - c. Describe what impacts the Subdivision or associated improvements would have on Wildlife areas such as big game wintering range, migration routes, nesting areas, Wetlands, or important habitat for rare or endangered species.
 - d. Additional information as needed. (HB 486, § 17)

SECTION 13: ADMINISTRATIVE PROVISIONS

A. Variances.

2. Procedure: The Subdivider shall include with the submission of the ~~preliminary plat~~ Subdivision application a written statement describing the requested variance and the facts of hardship upon which the request is based. The County Commission shall then consider each variance. Variance requests for Major Subdivisions and Subsequent Minor Subdivisions shall be considered at the public hearing on the ~~preliminary plat~~ Subdivision application. (HB 486, § 14 and § 18)

SECTION 14: DIVISIONS OF LAND EXEMPT FROM SUBDIVISION REVIEW

J. ~~Aggregation of Lots and/or~~ Relocation of Common Boundaries within a Platted Subdivision.

1. The proper use of the exemption for ~~aggregation of lots and/or~~ relocation of common boundaries is to rearrange ~~and/or aggregate~~ five or fewer Lots within a platted Subdivision and does not increase the total number of Lots. The plat shall contain the title “Amended Plat” and must be filed with Clerk and Recorder.

2. The Amended Plat showing the ~~aggregation of lots and/or relocation of common boundaries~~ within a platted Subdivision must be accompanied by:
 - a. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly-described parcel(s) ~~that are acquiring additional land~~; and
 - b. Documentation showing the need or reason for the relocation (for example: structure encroachment, Surveyor error or enhancement of the configuration of the property).
- ~~3. A rebuttable presumption exists when a proposed aggregation of lots and/or relocation of common boundaries within a platted subdivision is adopted for the purpose of evading the Act if it determines that six or more lots are affected by the proposal.~~
3. Any division, redesign, or rearrangement of Lots which results in an increase in the number of Lots or which redesigns or rearranges six or more Lots must be reviewed and approved by the County Commission prior to the filing of the Final Plat. (*HB 486, § 12*)

K. Aggregation of Parcels or Lots within a Platted Subdivision.

1. The proper use of the exemption for aggregation of Lots is to aggregate five or fewer Lots within a platted Subdivision and does not increase the total number of Lots.
2. The Subdivision plat shall contain the title “Amended Plat” and must be filed with the Clerk and Recorder, and must show that the boundaries of the original parcels or Lots have been eliminated and the boundaries of a larger aggregate parcel are established.
3. A restriction or requirement that the original platted Lot or original unplatted parcel continues to apply to those areas. The Amended Plat showing the aggregation of Lots within a platted Subdivision must be accompanied by:
 - a. A deed(s) exchanging recorded interest from every person having a recorded interest in adjoining properties for the entire newly described parcel(s); and

- b. Documentation showing the need or reason for the aggregation (i.e., structure encroachment, Surveyor error or enhancement of the configuration of the property).
- 4. Any redesign or rearrangement of six or more Lots must be reviewed and approved by the County Commission prior to the filing of the Final Plat. (HB 486, § 12)